RECENT DECISIONS

CHARITIES—LIABILITY OF CHARITABLE CORPORATIONS FOR INJURIES TO EMPLOYEES.—The plaintiff, while an employee of the defendant, a charitable corporation, was injured through the negligence of the defendant's employees. The plaintiff brought an action against the defendant to recover damages resulting from the injury, alleging the doctrine of *respondeat superior* as grounds for recovery. The defendant replied that a charitable corporation was exempt from damages, relying upon the "trust fund" doctrine. *Held,* no recovery. *Emery* v. *Jewish Hospital Association* (Ky.), 236 S. W. 577 (1921).

This case does not disclose whether or not the injury was the result of a breach of a non-assignable duty. A few courts hold a charity liable for injuries to a servant employed by it which result from the breach of a non-assignable duty, basing their decisions upon the doctrine of *respondeat superior. Hewitt* v. *Woman's Hospital Aid Association,* 73 N. H. 556, 64 Atl. 190, 7 L. R. A. (N. S.) 496 (1906). A charity has been held liable for an injury to a servant resulting from not providing proper appliances to machinery as required by a State statute. *McInerny* v. *St. Luke's Hospital Association,* 122 Minn. 10, 141 N. W. 837, 46 L. R. A. (N. S.) 548 (1913). And a charity has been held liable for an injury to an employee which was not the result of a breach of non-assignable duty. *Gartland* v. *N. Y. Zoölogical Society,* 113 N. Y. S. 1087, 61 Misc. Rep. 643 (1909). See also *Hordern* v. *Salvation Army,* 199 N. Y. 233, 92 N. E. 626, 32 L. R. A. (N. S.) 62, 139 Am. St. Rep. 889 (1910). In some instances charities have been held liable for the negligence of a servant causing injury to an employee. *Bruce* v. *Central M. E. Church,* 147 Mich. 230, 110 N. W. 951, 10 L. R. A. (N. S.) 74, 11 Ann. Cas. 150 (1907). *Contra, Thomas* v. *German General Benevolent Society,* 168 Cal. 183, 141 Pac. 1186 (1914).

This doctrine of *respondeat superior* has been repudiated in several cases, and the charity exempted from liability because of public policy. *Whittaker* v. *St. Luke's Hospital,* 137 Mo. App. 116, 117 S. W. 1189 (1909). See also *Farrigan* v. *Pevear,* 193 Mass. 147, 78 N. E. 855, 7 L. R. A. (N. S.) 481, 118 Am. St. Rep. 484, 8 Ann. Cas. 1109 (1906). In at least one jurisdiction a charity is also exempted from liability under the Workmen's Compensation Laws. *Zoulalian* v. *New England, etc., Association,* 230 Mass. 102, 119 N. E. 686, L. R. A. 1918F, 185 (1918). The same relations do not exist between a charity and an employee as exist between master and servant. The charity exercises functions which in a large sense belong to the state and, like the latter, is exempted from liability resulting from the negligence of an employee or a beneficiary. *Leavell* v. *Westernn Ky. Asylum,* 122 Ky. 213, 91 S. W. 671, 28 Ky. Law Rep. 1129, 4 L. R. A. (N. S.) 269, 12 Ann. Cas. 827 (1906); *Corbett* v. *St. Vincent's Industrial School,* 177 N. Y. 16, 68 N. E. 997 (1903); *Williams* v. *Louisville Industrial School of Reform,* 95 Ky. 251, 24 S. W. 1065, 23 L. R. A. 200, 44 Am. St. Rep. 243 (1894).

The "trust fund" doctrine as laid down in the instant case has been

generally accepted as the true doctrine in exempting a charity from liability for injuries to a "beneficiary". *Parks* v. *Northwestern University,* 218 Ill. 381, 121 Ill. App. 512, 4 Ann. Cas. 103 and note (1905); *Scholendorff* v. *Society of N. Y. Hospital,* 211 N. Y. 125, 105 N. E. 92, 52 L. R. A. (N. S.) 505 (1914). For a *contra* discussion see, 1 VA. LAW REV. 636 (beneficiaries). 3 VA. LAW REV. 75, 8 VA. LAW REV. 72 (pay patients in a charitable hospital).

All funds donated to the charity are held in trust for the particular charitable purpose and these funds can neither be diverted, wasted nor squandered by the trustees, state or any other person, but must be applied only to the particular purpose of the charity for the public's interest. To allow an employee to recover for injuries would be a diversion of the trust fund and contrary to the purpose contemplated by the creator of the charity, and many such diversions would finally destroy the institution and cast a burden upon the state to care for the poor and needy.

CONTRACTS—SILENCE AS ACCEPTANCE OF OFFER.—The plaintiff permitted the defendant to store hay in his barn, but there was no contract between the parties as to compensation for the storage, or as to the terms of the storage. The plaintiff notified the defendant in writing that if the hay was not removed before a certain date that a certain charge per day would be made thereafter for the storage. The defendant made no reply to the notice, neither did he remove the hay by the specified time. The plaintiff brought an action in assumpsit to recover the amount of storage at the price contained in the notice which accrued from the time specified until the removal of the hay. *Held,* no recovery. *Bowley* v. *Fuller* (Me.), 115 Atl. 466 (1921).

This decision was based upon the fact that silence alone does not constitute acceptance of an offer. This view is supported by the weight of authority. *Equipment Company* v. *Coal Company,* 158 Ky. 247, 164 S. W. 794 (1914); *Prescott* v. *Jones,* 69 N. H. 305, 41 Atl. 352 (1898); *Royal Insurance Co.* v. *Beatty,* 119 Pa. St. 6, 12 Atl. 607, 4 Am. St. Rep. 622 (1888).

Where an offeree did not accept either by parol or in writing but accepted the benefits of the offer, it was held that his silence and acceptance of the benefits constituted acceptance of the offer. *Manufacturers' etc., Bureau* v. *Hosiery Co.,* 152 Wis. 73, 138 N. W. 624, 42 L. R. A. (N. S.) 847, Ann. Cas. 1914C, 449 (1912).

Where the defendant sent a contract to the plaintiff to sign and accept, but instead of accepting it in its original form, the plaintiff altered, signed and returned the contract to the defendant, who remained silent and neither affirmed nor rejected the altered contract, but permitted the plaintiff to perform his part of the agreement the court decided that the defendant accepted the contract as amended. *Robertson* v. *Tapley,* 48 Mo. App. 239 (1892).

A somewhat similar case in which the holding is contra to that of the present case is that of *O'Neal* v. *Knippa* (Tex.), 19 S. W. 1020 (1892). In this case the defendant had some cattle pasturing upon the plaintiff's premises. The plaintiff told the defendant that he desired the use of the premises but that he could continue to keep the cattle upon the premises by paying a certain amount per month. The defendant neither accepted nor rejected the offer but replied, "That is too much", and noth-